

DB65sots sentence

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

13 Cr. 74 (JPO)

6 KENNETH SOTO,

7 Defendant.  
8 -----x  
9

10 November 6, 2013  
11 5:15 p.m.  
12

13 Before:

14 HON. J. PAUL OETKEN,

15 District Judge  
16

17 APPEARANCES  
18

19 PREET BHARARA

20 United States Attorney for the  
21 Southern District of New York

22 BY: KRISTY J. GREENBERG  
23 Assistant United States Attorney

24 GEORGE A. FARKAS, ESQ., PLLC

25 Attorneys for Defendant

BY: GEORGE A. FARKAS

26 ALSO PRESENT: U.S. Postal Service Special Agent Cassandra  
27 Cline

28 U.S. Dept. of Labor Special Agent Ani White

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1 (Case called)

2 THE DEPUTY CLERK: Starting with the government, can I  
3 have counsel state their appearance for the record, please?4 MS. GREENBERG: Yes, your Honor. Kristy Greenberg for  
5 the government, and with me at counsel table is U.S. Postal  
6 Inspection Service Special Agent Cassandra Cline and Department  
7 of Labor Special Agent Ani White.

8 Good afternoon, your Honor.

9 THE COURT: Good afternoon.

10 THE DEPUTY CLERK: Defendants?

11 MR. FARKAS: Good afternoon, your Honor. George  
12 Farkas for Ken Soto present in Court.

13 THE COURT: Good afternoon.

14 MR. FARKAS: Good afternoon, sir.

15 THE COURT: We are here for sentencing in this case.  
16 Mr. Soto pleaded guilty on June 27th to one count of fraud to  
17 gain federal employment compensation which is a class D felony.  
18 Before going into the usual things in the guideline calculation  
19 and everything, let's talk about where we are given the couple  
20 of letters that have come in.21 The government's submission raises certain matters, I  
22 guess, from the witness interviews by the inspector general  
23 agent regarding certain things Mr. Soto has said and defendant,  
24 in their reply submission, has said that these should not be  
25 credited and that, at most, the Court should hold a Fatico

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1 hearing.

2 So, I will hear from the government on how you think  
3 we should go forward.

4 MS. GREENBERG: Yes, your Honor.

5 We do not think that a Fatico hearing is necessary.  
6 There is not an issue of material fact that's in dispute.

7 In the defendant's reply the defendant doesn't  
8 seriously dispute the fact that the defendant was mocking this  
9 offense. On page 3 he may very well have minimized and  
10 disrespected the so-called investigation. That's quoted on  
11 page 3. Also, on page 3, it is possible the defendant could  
12 have sought to minimize the seriousness of the case in front of  
13 his former colleagues. Also, on page 3, while the case was in  
14 its investigatory stage, the defendant felt there was no real  
15 case against him.

16 So, there is no dispute that there were disparaging  
17 statements that were made about the case. Really, what the  
18 defendant seems to be disputing in his reply is the timing of  
19 when those disparaging statements were made and I would pose to  
20 your Honor that there is really no question that at least some  
21 of those disparaging statements did occur after the defendant  
22 entered his guilty plea.

23 If your Honor looks to Exhibit C which is the  
24 interview with Mr. Wiehl -- and I would note that all of these  
25 interviews were conducted by two law enforcement agents, not

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1 simply Special Agent Cline, but also Special Agent White and on  
2 one occasion Special Agent Zumbo -- but, looking at Exhibit C  
3 Mr. Wiehl states that two weeks ago, which clearly is after the  
4 time of the plea, Mr. Soto visited Mr. Wiehl while he was out  
5 on his route and that they discussed the case. Mr. Soto said  
6 that he was going to owe the government \$34,000 and that he  
7 would only get a slap on the wrist. His demeanor was joking,  
8 Mr. Soto didn't take the case seriously, and appeared not to be  
9 worried at all.

10 So, a few things to take from that: Again, the  
11 timing, the fact that the conversation happened two weeks ago  
12 after the plea but also, your Honor, if you focus on the  
13 number, \$34,000. Now, \$34,000 is the amount of the restitution  
14 that was indicated in the first version of the PSR. There is  
15 no way Mr. Wiehl would have known that figure if Mr. Soto  
16 hadn't told it to him. That is clear evidence that this  
17 conversation happened.

18 I would also point to Exhibit A which is the interview  
19 with the Postmaster and where the Postmaster indicates  
20 overhearing Mr. Soto speaking to other postal employees. And,  
21 again, he was saying -- again, it is very consistent with the  
22 interview with Mr. Wiehl, the same kinds of things that  
23 Mr. Soto was only going to receive a slap on wrist and he would  
24 only be required to pay back a small amount of money. The  
25 fact, again, that they're talking about what the punishment

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would be and the amount that he has to pay back, all of that indicates those statements were occurring after the plea and not before. So, really the issue as to timing, I think, is borne out by the memoranda themselves.

The only real issue that's in dispute between the parties is whether or not Special Agent Cline is friends with any of the people that she interviewed, the Postmaster or the postal employees. One, we would say that's not an issue of material fact, it is certainly not an issue that's worthy of a hearing but the government will proffer that Special Agent Cline is not friends with the Postmaster nor is she friends with the other postal employees that she and other law enforcement agents interviewed. Special Agent Cline has a professional working relationship with these individuals but nothing more.

THE COURT: She stands by these -- the agents stand by these interview memoranda?

MS. GREENBERG: Yes, your Honor. I conferred with both Special Agent Cline and separately Special Agent White. They both have confirmed that the accuracy of the statements in those memoranda, that those were in fact the statements that were made to them by these postal employees.

However, your Honor, if you were to wish to hold a Fatico hearing, the government would call the Postmaster and those three employees as witnesses. And what we would expect

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1 that testimony to show is that Mr. Soto in fact made those  
2 statements to each of those witnesses and they would also  
3 testify, if your Honor wanted to hear, that they're not friends  
4 with Special Agent Cline though, as a side note, I'm not quite  
5 sure how that would matter anyway. Even if she was friends  
6 with him it doesn't necessarily call into question her ability  
7 to objectively investigate a case.

8 So, again, we don't think there is a material issue of  
9 fact here that is seriously in dispute and we don't think a  
10 hearing is necessary. But, if your Honor were so inclined, we  
11 would be happy to call witnesses.

12 THE COURT: Mr. Farkas, did you want to respond to any  
13 of that? I did receive your letter so I know your view on  
14 that.

15 MR. FARKAS: I know that, your Honor, but I have to  
16 address the mischaracterization of what I wrote and what I  
17 proffered to the Court.

18 Your Honor, I got involved in this case long before  
19 the February arrest of Mr. Soto. The investigation was  
20 ongoing. My client was always under the belief that the  
21 investigation alleged or centered not solely on the fact that  
22 he had outside employment which, incidentally, in other reports  
23 that I have handed up to the Court in my initial submission,  
24 the Postmaster agreed that he basically revealed that  
25 information -- not bragged about it but revealed it and I would

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1 point to Exhibit A in my initial submission. But, he was under  
2 the impression that the post office was trying to deprive him  
3 of compensation because they claimed that his injuries were  
4 phony.

5 Now, your Honor, I have to give you a little bit of  
6 background on this. I am not denigrating the seriousness of  
7 this offense. It is a serious offense to lie in an application  
8 for compensation but, relatively speaking, compared to other  
9 cases that come through the doors of this court, this is a  
10 relatively minor case notwithstanding the fact that it is a D  
11 felony. And, again, I underscore that I am not denigrating the  
12 seriousness of it. What I will tell you is that what struck me  
13 in the early stages before Mr. Soto was arrested -- and, by the  
14 way, the agents well knew that he was represented and we were  
15 willing to come in but we were ignored. I mean, I wasn't  
16 hiding somewhere. I was representing Mr. Soto, there were  
17 interviews scheduled out at Kennedy Airport, I said let's go,  
18 I'll take him, I'll let him be interviewed. The bottom line  
19 being that Mr. Soto -- Ken -- was under the impression that  
20 they're going to charge him with lying about his injury and he  
21 says how can they do that when the post office's own doctors  
22 and independent medical examinations verified his injury? It  
23 is a stupid, weak case, how can they do that? And he kept  
24 concentrating on the fact that they're denigrating his injury.

25 Now, he did in fact mock the case because he said if

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1       they try it prove that I'm going to bring their doctors who  
2       said that I do have this on-the-line injury.

3           I would respectfully point your Honor's attention  
4       again to Exhibit A which took me a tough time to get because I  
5       had to subpoena it from the union people. There was a  
6       grievance filed against Ken, and in connection with that there  
7       was a step one interview of the Postmaster and where was it  
8       held? At the post office.

9           Now, your Honor, I did a small bit of research. The  
10       population of Long Valley, according to the latest census, I  
11       believe, is 1,879. I compared that to a couple of areas.  
12       There is a little town Ellenville upstate, 4,134. Your Honor  
13       may personally familiar with Beauty, Kentucky which has 457  
14       people or the little town of Jeffersonville which has 1,800.

15           So, everybody here knows everybody. The interview of  
16       the Postmaster in which he said materially different things  
17       than she says in this report, allegedly said in this report  
18       about finding -- about rural carriers not being able to have  
19       part-time or light-duty employment, she said something contrary  
20       to that in the report. I believe it is for your Honor to read  
21       that. But, in that context in a hearing at the post office the  
22       same place with where these interviews were conducted that he  
23       walked out of there -- and I can't quote him, but he basically  
24       said this is a lot of BS. They've got nothing on me and  
25       they're just trying to take way my compensation. And it was in

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1 that context that he steamed and he stormed that he is going to  
2 lose his job because they're going to try to prove that he  
3 doesn't have a legitimate injury.

4 Now, the agent who lives in Long Valley is one of the  
5 1,879 people who we know and if it comes to a Fatico we will  
6 talk about Mr. Wiehl being a volunteer fireman, about the  
7 agent's presence at the firehouse -- which has nothing to do  
8 with postal inspectors -- at a Christmas party this past  
9 Christmas. We don't want to go into that. We don't need to  
10 belittle this case.

11 The bottom line being that Mr. Soto very strongly  
12 takes exception to the fact -- to the charge that he has  
13 denigrated or has not given proper respect to the gravity of  
14 the case. I believe that the word was -- I quoted it in my  
15 letter --

16 THE COURT: What about the comments about getting --

17 MR. FARKAS: Unabashed mockery of his offense.

18 THE COURT: What about the comments about getting a  
19 slap on the wrist.

20 MR. FARKAS: I'm sorry.

21 THE COURT: What about the slap on the wrist comment?

22 MR. FARKAS: He categorically 100 percent denies that.

23 Judge, the 4th -- two weeks prior, I guess that would  
24 be the beginning of October, he did have a conversation with  
25 the man who ended up getting his route and he was talking and

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1 he was mourning -- not mourning, that's the wrong word, but he  
2 was bemoaning the fact that \$34,000 has to be returned. That's  
3 the figure that I gave him because it was a mistake in the PSR  
4 and I never corrected it. We do know that the correct amount  
5 is \$38,000. He did in fact say on various occasions earlier on  
6 during the investigation that the case was weak but he  
7 categorically denies it and he says to me I will swear on  
8 anything the Judge wants me to swear, I don't consider this a  
9 slap on the wrist.

10 Judge, the updated PSR which Agent Cline added certain  
11 things, she indicated to the probation officer that they're  
12 going to move to remove his compensation payment immediately  
13 upon sentence. If you take a look, and we did this as soon as  
14 we received the new PSR, if you take a look at the verified  
15 income and outflow and his balance sheet verified by the  
16 probation officer, he had an income of \$9,650 which included  
17 \$3,630 of Worker's Compensation payment and he's got expenses  
18 of \$8,610.

19 If the post office is right, that Agent Cline, the  
20 friend of Mr. Wiehl is correct and they move to take away and  
21 they move to take away his compensation, I have figured by  
22 calculator that he will have a negative cash flow of \$2,590 per  
23 month. And he knows that he has obligations to pay the \$38,000  
24 so where he would get off even assuming that this would be a  
25 slap on the wrist to somebody who is financially stable to even

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1       remotely consider that this is a slap on the wrist. He  
2       categorically, a hundred percent, denies this.

3           Your Honor, I have been doing this for a little over  
4       40 years. I have never seen anything like this. I can't, for  
5       the life of me, believe that the case agent on this case is so  
6       inexorably intertwined with the rest of the community and --

7           THE COURT: Are you saying she's lying?

8           MR. FARKAS: I'm sorry?

9           THE COURT: You think the case agent is lying?

10          MR. FARKAS: I think it is a gross mischaracterization  
11       at best. I believe that it's words put together, it is an  
12       opinion. I think it is a mix of what happened while the case  
13       was being investigated. I don't think that she believes that  
14       proper respect was shown to this great investigation. The  
15       man-hours and everything that was put into those videotapes  
16       which, by the way, there isn't one minute on those  
17       videotapes -- and I sat there -- that disproved this man's  
18       injury. Not a minute. And that -- and the postmaster was  
19       confronted with that and certain assumptions were made. And I  
20       think that it's a personal grudge. I would rather not go on  
21       exploring it but I can.

22          THE COURT: I don't know that it matters.

23          MR. FARKAS: Judge, I hope it doesn't matter. The  
24       undercurrent of all of this is, as I set forth in my letter,  
25       that this is intended to infuriate you. This is intended for

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1 you to believe that Ken Soto does not take what is about to  
2 happen to him seriously.

3 While attorneys don't vouch for clients, I've lived  
4 the case with this man for, I believe six months prior to his  
5 arrest; his constant visits to the office, his hearing about  
6 being followed, the investigation. Judge, Seal Team 6 would  
7 have been proud of this investigation on this kind of a case.  
8 To me it boggles my mind and I think it is meant to dirty him  
9 up and not only that but when we get finished here, the agent  
10 knows, the town knows that he is not giving up his fight to  
11 continue to collect his compensation because he has his  
12 work-related injury and if any of this --

13 THE COURT: Why has he been getting workers comp until  
14 now? I don't understand.

15 MR. FARKAS: He has been getting it because he is  
16 entitled to it.

17 THE COURT: Even though he lied on the --

18 MR. FARKAS: Judge, there is a specific period during  
19 which he received compensation. That's the amount that he has  
20 to repay. For a year and a half he filed reports saying I  
21 wasn't working. He has not denied that he is working.

22 THE COURT: Now he does admit he is working and he  
23 still gets it even though he is working?

24 MR. FARKAS: Yes, but they're going to look to pull  
25 it.

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1                   The charge in the indictment or I should say in --  
2 yes, it is in the indictment I guess and it is in the PSR, is a  
3 year and a half period and during that period he did, as he  
4 admitted and he fully and completely accepts responsibility, he  
5 admitted to lying about having outside work. Now, it is  
6 interesting because the postmaster, in an interview back in  
7 2011, also states that she knew that Mr. Soto volunteered as a  
8 highway auxillary officer. She considered that work. He did  
9 not. But he did not keep that from her. But they lumped that  
10 in with the addition of lying.

11                   Your Honor, all I'm asking you is, please, with your  
12 experience, don't buy into this. We can have a Fatico if you  
13 want. We can go ahead. I happen to know, based on the little  
14 research that I did, Long Valley Post Office employs eight to  
15 nine carriers three to four clerks, the postmaster and three  
16 associates and who comes up and says slap on the wrist, the  
17 case is weak, I only have to give back a little bit of money?  
18 Mr. Wiehl, Mr. Wiehl who lived around the corner from Agent  
19 White until he got divorced and moved to another part.

20                   THE COURT: How does the fact that even if they do  
21 know each other, how does that fact make the agent likely to  
22 have lied?

23                   MR. FARKAS: The way this factors in, Judge, and I  
24 make it a point not to repeat what I have submitted in writing,  
25 is the following: I find it strange from a trial lawyer's

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1 standpoint that the points that were made by Mr. Wiehl that he  
2 stated he will only get a slap on the wrist and that the case  
3 was weak and it should have been dropped, those are the key  
4 points of his statement that he made -- that allegedly Mr. Soto  
5 made in a conversation. Okay?

6 About a week or so later the agents interview the  
7 postmaster. Now, she can't say that Mr. Soto spoke to her  
8 because he can't speak to her, she's the cause of all of his  
9 troubles. That's in the report. That's undisputed.

10 THE COURT: Doesn't the postmaster say that he said he  
11 told people he wouldn't have to pay anything back or just pay a  
12 small amount back?

13 MR. FARKAS: No. The way I read the record is that  
14 what she stated a week later is not that he said anything to  
15 her but that she overheard Soto say that he was going to get a  
16 slap on the wrist and that the case was weak. Word for word  
17 what Mr. Wiehl said a week and a half ago to the agent.

18 Now, the postmaster now overhears this? I don't  
19 believe it is worthy of comment, Judge. If we were talking  
20 about a major, major case looking at guidelines that are very  
21 large I would fight this to the bitter end. I'm asking you to  
22 take under consideration the fact that I have lived this case  
23 with Mr. Soto, he does not consider anything about a slap on  
24 the wrist, he knows exactly that he has to pay things back. He  
25 may, if the agent is correct, have to start dealing with a

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1 negative cash flow. It is pointed out in the updated PSR in  
2 their addendum. Nothing could be further from the truth.

3 I am not comfortable calling an agent a liar. I'm not  
4 comfortable calling an agent exaggerating. I am not  
5 comfortable doing any of this and this wouldn't have happened  
6 if there was a mischaracterization -- that I know to be a  
7 mischaracterization that absolutely shocked me about Kenneth  
8 Soto. I have never heard of anything remotely like this. The  
9 man has been in my office regularly crying how am I going to do  
10 this? I know I have an obligation. I have to get a third job.  
11 And the constant words coming out of him is look at what  
12 they're doing, they're screwing me over even with the  
13 compensation even though they know that I have the injury, even  
14 though three doctors employed by the post office have verified  
15 that.

16 THE COURT: Okay.

17 MR. FARKAS: Judge, I don't know what to add. I'm at  
18 a loss.

19 THE COURT: Well, I don't know what. I mean, if you  
20 want to address any of that?

21 MS. GREENBERG: Yes, your Honor.

22 It is hard to even just sit here without jumping up at  
23 various points of that.

24 The government strongly disputes that Special Agent  
25 Cline has done anything improper. Based on what I have heard

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1 defense counsel just say, she has a personal grudge against the  
2 defendant and an axe to grind based solely on the fact that she  
3 lives in the same town? It is absurd. She was assigned this  
4 case because that's her territory. It is not like she sought  
5 this case out against defendant, it was randomly assigned to  
6 her because that's the territory she works in.

7 The other charge laid at her door is that apparently  
8 the Seal Team 6 would be proud, they did a thorough and  
9 meticulous investigation and therefore that means they have  
10 some vested interest in persecuting the defendant. No. It  
11 means they did their job. That's all it means.

12 And, if anything, there is a reason why these  
13 investigations, just to provide the Court with a little bit of  
14 background, are as detailed and meticulous as they are.  
15 Federal Worker's Compensation fraud is endemic in the United  
16 States Postal Service. I understand defense counsel is  
17 entitled to his view that this is not a major case. The Postal  
18 Service and the Department of Labor in our office beg to  
19 differ. It is a big case. It is important. Our office  
20 currently has between 6 to 12 active matters of these kinds of  
21 federal Worker's Compensation fraud before us. The fraud is  
22 extremely hard to detect and it is even more difficult to  
23 prove. It is hard to prove beyond a reasonable doubt that an  
24 employee did not have an injury or was not working somewhere  
25 where they say they are.

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1                   So, a huge effort is undertaken by the postal service  
2 and Department of Labor in investigating these cases and the  
3 investigation here against Mr. Soto is no different than the  
4 other investigations that are in our office. There were  
5 undercover operations, there is surveillance to see where  
6 they're working otherwise, subpoenas for business records to  
7 determine really if this person is actually injured or actually  
8 working somewhere else. This is no different. Nobody is  
9 persecuting Mr. Soto.

10                  Another reason why they do the meticulous and thorough  
11 work that they do as exceptional public servants that they are,  
12 the reason they do that is because these postal employees, just  
13 like the defendant, just keep fighting even after they're  
14 already convicted.

15                  So, you heard, and it is in the defendant's reply,  
16 that even though he is convicted in federal court of fraud, he  
17 is still fighting to keep his compensation and he is still  
18 fighting to keep his job. He says he maintains the treatment  
19 by his employer was unfair and it was wrong. He states that he  
20 intends to continue to fight tooth and nail to be compensated  
21 for his injury and he is going to even pursue arbitration to  
22 get his job back.

23                  I mean, this is not accepting responsibility.  
24 Accepting responsibility is dealing with the consequences of  
25 your actions. If you lie on forms about whether or not you

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1 have other employment, you shouldn't get to keep that federal  
2 job that you lied about repeatedly. And you certainly  
3 shouldn't get to keep cashing your compensation checks. I mean  
4 he is still, to this day, cashing compensation checks and the  
5 way that the system works with Department of Labor is that not  
6 only does he have to be convicted but he has to also be  
7 sentenced before they can discontinue that process which,  
8 again, the defendant says he still plans to fight.

9 THE COURT: But that's all based on his idea that not  
10 about this particular offense but on this idea that he really  
11 is injured. Anyone questioning his actual injury, that's a  
12 separate issue. That's not what I'm sentencing him for but it  
13 seems like that's what he is fighting, is this idea that he  
14 wasn't really injured, right?

15 MS. GREENBERG: Well, maybe fighting that separate  
16 issue but putting aside whether or not he was injured, the very  
17 fact that he lied on the forms about whether he had other  
18 employment, that's enough that he should not be compensated and  
19 therefore he would not be receiving any more compensation after  
20 he's sentenced.

21 THE COURT: Okay.

22 MS. GREENBERG: Just to speak very briefly on the  
23 alleged injury.

24 Again, the constant theme is that he is being  
25 persecuted but the postal service cannot find him another

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1 position to deal with this alleged injury. By no accounts is  
2 the government conceding that this is a legitimate injury and,  
3 again, I understand that's not what you are sentencing him on  
4 but we do have serious doubts as to whether or not this injury  
5 to his forearm is real. He expects us to believe that what he  
6 can't do is this, making this motion, just sorting mail in a  
7 repetitive way yet -- and these were produced in discovery and  
8 I'm happy to hand them up to the Court -- they're photos of him  
9 that were taken where he's lifting heavy boxes. They're very  
10 large boxes that appear heavy. He is operating a snow blower.  
11 He is using his forearm to scrape snow off of a windshield. It  
12 just defies logic to believe that this man has an injury -- a  
13 legitimate injury that means he can't sort mail but he can  
14 engage in those sorts of tasks.

15 THE COURT: Sometimes tendonitis is a very specific  
16 axis movement and you can do lots of other things; you can lift  
17 a box but you can't actually do this one specific thing. I  
18 mean that's why typing in a certain way can lead to tendonitis.  
19 I haven't researched this but I'm just saying in terms of  
20 common sense. Isn't that true?

21 MS. GREENBERG: Well, I would say as common sense if  
22 you did have this kind of injury and you were so anxious to get  
23 back to the postal service certainly aggravating an injury with  
24 this kind of strenuous activity on a fairly regular basis is  
25 not -- you wouldn't want to exacerbate or risk exacerbating any

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1 sort of legitimate injury by engaging in these kinds of  
2 activities.

3 THE COURT: Okay.

4 MS. GREENBERG: But, I mean, at the end of the day I  
5 guess my point being this case is not about the Postmaster and  
6 it is not about Special Agent Cline, it is about the defendant  
7 and the seriousness of his offense and that's what we ask your  
8 Honor to focus on, not to be distracted by these issues about  
9 where the Special Agent lives, who she's friends with. It is  
10 utterly irrelevant and just a mere tactic to try and distract  
11 you from the fact that he cheated the system, he bragged about  
12 cheating the system, and then when he got called out on  
13 bragging about cheating the system he sought to assign blame to  
14 anybody he could. It is just simply not what is at stake in  
15 the sentencing. We ask your Honor to focus on the offense and  
16 focus on the defendant's commission of it.

17 THE COURT: Okay.

18 MR. FARKAS: Your Honor, may I be very briefly heard?

19 THE COURT: Yes.

20 MR. FARKAS: The indictment and the charge was very  
21 specifically drawn in this case. He lied about work. He did  
22 not lie about his injuries, he wasn't accused of lying about  
23 his injuries. He lied about work. That was explained to him  
24 by me in the office and it resulted in the guilty plea. Yes, I  
25 did do that. That's what he pleaded guilty to. The fact that

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1 he is going to pursue his right to be compensated for an  
2 on-the-job injury, it may be fighting windmills. It may be  
3 that his union that is setting up the arbitration hearing, it  
4 may be hopeless. I put that out there. I don't know. But, I  
5 do know that it is the injuries that he is fighting and then  
6 just one word about how I believe that some of the  
7 characterizations and one of the submissions by Ms. Greenberg  
8 in her letter how she swallowed, in whole, the concept that  
9 rural carriers do not have light duty work available to them.  
10 Apparently one of the exhibits, a union rep said that he told  
11 Mr. Soto that light duty is not available for rural carriers.  
12 His union told him completely the opposite.

13 Ms. Brookens, the Postmaster, before she was  
14 interviewed on November 1st, stated in an interview on December  
15 28th, 2011 when she was asked by the union rep: "When the  
16 grievant first went out on leave and you received his medical  
17 limitations, did he inquire with you about finding work within  
18 his limitations? If so, what did you tell him?"

19 She said: "Not initially" -- by the way, this is in  
20 her handwriting -- Not initially, but after seeing the doctors,  
21 he did. There was no limited duty work available in this  
22 office."

23 "He stated that you told him that you had no work and  
24 that he should contact someone else. Who was that person?"  
25 And then she says who that person was.

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sentence

1           That doesn't sound like the law says or the rules say  
2 that rural carriers are not entitled to limited duty. It never  
3 happened, it is not true, it is a part for another forum and I  
4 happen to agree with Ms. Greenberg we should not be distracted  
5 by all of these things that I never brought up until I received  
6 her sentencing submission.

7           THE COURT: Okay.

8           MR. FARKAS: Thank you.

9           THE COURT: Thank you.

10           I think I'm going to go ahead with some of the  
11 preliminary matters that I didn't cover yet which is first I  
12 want to confirm that I received everything I should have. I  
13 have reviewed, in preparation for today, the presentence report  
14 with an addendum and sentencing recommendation. Probation  
15 recommends, I believe it is three years of supervised release  
16 with a six-month home detention condition. I have received a  
17 submission by defense counsel, Mr. Farkas, dated October 22nd  
18 with several letters from colleagues and friends of Mr. Soto,  
19 the government's submission of November 4th and defendant's  
20 reply of November 5th and the attachments to those.

21           So, I think that's everything, right? There hasn't  
22 been any other submission besides those?

23           MS. GREENBERG: No, your Honor.

24           THE COURT: Mr. Farkas, have you read the presentence  
25 report and discussed it with your client?

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sentence

1                   MR. FARKAS: We have, yes.

2                   THE COURT: And, Mr. Soto, have you read the  
3 presentence report and discussed it with Mr. Farkas?

4                   THE DEFENDANT: Yes, sir.

5                   THE COURT: Ms. Greenberg, have you reviewed the  
6 presentence report?

7                   MS. GREENBERG: Yes, your Honor.

8                   THE COURT: Are there any objections to the  
9 presentence report?

10                  MS. GREENBERG: No, your Honor.

11                  MR. FARKAS: There are no exceptions, Judge, except  
12 that we differ on the recommended sentence and we ask that you  
13 impose the sentence that we recommended.

14                  THE COURT: Okay.

15                  I hereby adopt the facts set forth in the presentence  
16 report as my findings of fact. The starting point, in  
17 determining a sentence, is the sentencing guidelines. Although  
18 the Court is not required to follow the sentencing guidelines I  
19 am so required to consider the applicable guideline range. It  
20 is the starting point on the lodestone in any sentencing  
21 decision and so I would need to start by making sure I have an  
22 accurate calculation of the guidelines. And, I believe the  
23 calculation in the presentence report is consistent with the  
24 one in the plea agreement.

25                  MS. GREENBERG: It is, your Honor.

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sentence

1                   THE COURT: In this case.

2                   MR. FARKAS: Yes.

3                   THE COURT: Thanks.

4                   Based on my independent evaluation of the sentencing  
5 guidelines and my understanding that the parties don't object,  
6 I accept the calculation in the PSR using the guideline manual  
7 in effect on November 1st, 2012; the base offense level is 6.  
8 Because the loss amount is \$34,000 -- actually, it is the  
9 \$38,000 number -- \$38,000 plus there is an increase of six  
10 under the guidelines. For acceptance of responsibility there  
11 is a reduction of two points so the total offense level is 10,  
12 the Criminal History Category is I because there is no prior  
13 offenses and therefore the guideline range is 6 to 12 months  
14 and a recommended fine under the guidelines of \$2,000 to  
15 \$20,000.

16                   As I said, I have read all of your submissions and we  
17 addressed the recent issues from the last submissions, but if  
18 defense counsel wants to add anything else that we haven't  
19 covered, you are welcome to but maybe you have already covered  
20 everything. And then I will give Mr. Soto a chance to speak,  
21 if he would like.

22                   MR. FARKAS: Your Honor, the only thing I didn't state  
23 which is the obvious: That all he is looking to do is to work,  
24 work hard, make money, pay back this money. I don't believe  
25 that home confinement is necessary even though I understand

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sentence

1 that home confinement can be adjusted for him to go to work.

2 This is a man who is broken and I think that knowing  
3 his obligation to repay the money, coupled with a period of  
4 probation which is what it is going to take him to repay this  
5 money, addresses each and every element of the purposes of  
6 sentencing.

7 That's all. Thank you, your Honor.

8 THE COURT: Thank you.

9 Mr. Soto, if there is anything you would like to say  
10 today, you may. You are not required to speak, but you may.

11 THE DEFENDANT: Yes, your Honor.

12 Your Honor, I have and continue to accept  
13 responsibility for lying about work when I applied for  
14 compensation. It was wrong and it was a mistake for which I  
15 have and will continue to pay for dearly.

16 I am begging your Honor to accept the fact that my  
17 injury was real and verified by independent medical  
18 examinations. I always wanted to work and never wanted to go  
19 out on compensation. I never claimed fraudulent injury and  
20 never wanted compensation that I wasn't entitled to. Even  
21 though I fully accept responsibility for the wrong that I  
22 committed, I cannot help but feel betrayed by my employer for  
23 not finding suitable work for me.

24 I will take steps to try and cut off my benefits to  
25 which I believe I am rightfully entitled. As I stand before

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sentence

1 you, I simply don't know how I will make it but I will  
2 certainly try. I would rather not dignify the statement  
3 attributed to me by the close friends of Agent Cline who just  
4 came out of the woodwork. All I will say is that I never said  
5 that I will get a slap on the wrist or anything resembling  
6 that, nor did I characterize the money that I have to repay as  
7 small.

8 Please look at my income and resources. Does \$38,000  
9 sound small to a person with my resources? These people were  
10 never my friends. The last thing I would do is have important  
11 conversations with them.

12 I stand ready to accept whatever sentence you give me.  
13 I only pray that you are not influenced by the last minute  
14 allegations about my attitude; they're all just lies.

15 Thank you.

16 THE COURT: Thank you.

17 Ms. Greenberg, is there anything you would like to say  
18 other than what we have already covered?

19 MS. GREENBERG: Yes, your Honor.

20 A guideline sentence here of 6 to 12 months'  
21 imprisonment is absolutely justified in this case one because  
22 there is need for just punishment. There have to be real  
23 consequences to this offense and as you heard the defendant  
24 say, he is still fighting for his job, still fighting for  
25 compensation. Whether or not he says now that the restitution

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sentence

1 amount is really something that's a lot for him that what he is  
2 saying to his attorney and what he is saying now is just simply  
3 not what he was saying to other people. Clearly he was saying  
4 to them that this didn't mean anything to him and obviously  
5 what you tell others and what you are telling your attorney are  
6 two different things.

7 There is a need here for actual prison time to feel  
8 some just punishment. I would also point to deterrence. As  
9 both defense counsel and I have noted, this is a small  
10 community, this is a small post office, and these cases where  
11 you can actually successfully prosecute someone for Worker's  
12 Compensation fraud, they are difficult to do. So, when  
13 somebody is actually successfully prosecuted and there is no  
14 real consequence, it sends exactly the wrong message to the  
15 other postal employees about what the consequences of this  
16 offense are; particularly not just to that small community but  
17 also to the postal union and to workers beyond that community.  
18 There is a real need for deterrence here to other postal  
19 employees to show that this kind of fraud is not tolerated and  
20 it is not okay and there are serious consequences to committing  
21 it in a system that is, frankly, bleeding.

22 Also, looking at the history and characteristics of  
23 this particular defendant, he worked for the post office for  
24 over a decade. He was a supervisor. He also worked at the  
25 NYPD as an auxillary police officer. This is somebody who

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sentence

1 should have known better than to commit this kind of fraud.

2 Finally, most importantly, a guideline sentence here  
3 is important to promote respect for the law. You can't cheat  
4 the system, brag about it, and then when you are called out  
5 blame everybody else associated with it and not have to face a  
6 guideline sentence. He blamed the system for why he has  
7 committed this fraud in the first place because they didn't  
8 give him a position he wanted. He blamed them for  
9 investigating him too strenuously, in his opinion, for his own  
10 fraud, and then he blames them for investigating his statements  
11 about it after the fact where he mocked it.

12 You know, he needs to stop assigning blame to other  
13 people and accept responsibility for what he has done and a  
14 guideline sentence would send that message home.

15 THE COURT: Can I ask you also, the restitution is  
16 \$38,304, right?

17 MS. GREENBERG: That's correct.

18 THE COURT: Is the government also seeking forfeiture  
19 in the same amount?

20 MS. GREENBERG: No, your Honor, just restitution.  
21 And, I do have a restitution order to hand up to your Honor.

22 THE COURT: So the forfeiture is dropped?

23 MS. GREENBERG: That's correct.

24 THE COURT: In preparing to sentence the defendant I  
25 have considered the presentence report, probation's

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sentence

1 recommendation, the written and oral statements of defense  
2 counsel and the defendant and the government and I have  
3 considered each of the factors set forth in 18 U.S.C. 3553(a)  
4 which you are all familiar with. Even if I don't mention them  
5 specifically I have considered each of them in this case. The  
6 Court is required to impose a sentence that is sufficient but  
7 not greater than necessary to comply with those sentencing  
8 factors.

9 Starting with the nature and circumstances of the  
10 offense, this offense is a serious offense. It is not the most  
11 serious offense but it is a serious offense; it is hard to  
12 track down and it does happen, and in this case I believe that  
13 the offense was undertaken deliberately and knowingly. The  
14 defendant defrauded the government by lying about outside  
15 employment to obtain federal worker compensation benefits.  
16 That's what he's being sentenced for. The issues about whether  
17 injuries are real, that's a separate issue and that's not what  
18 he pleaded guilty to. But, what he did plead guilty to is a  
19 real crime, it is a serious crime. He also took steps to avoid  
20 being detected the way the checks for his other business. The  
21 way they were directed to be paid out indicated that he was  
22 specifically avoiding being caught. And so, I think there is  
23 real culpability here. He ultimately obtained over \$38,000  
24 from the government that he wasn't entitled to.

25 Defense counsel argues that he was really just trying

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sentence

1 to work but the offense wasn't about work, as I said, it was  
2 about lying on the application and knowingly taking steps to  
3 cheat the government out of money with those lies.

4 I also need to consider the history and  
5 characteristics of the defendant. The letters do indicate that  
6 he is a good person in many ways; I think he has worked hard  
7 and wanted to work and wants to work and also that he has  
8 volunteered extensively including with the auxiliary police.

9 There is this issue about whether he either earlier or  
10 more recently made light of this offense to which he pleaded  
11 guilty, whether he was expecting a slap on the wrist. I think  
12 it is more likely than not. I'm not exactly sure what was  
13 said. I think it is more likely than not that he did make some  
14 comments suggesting that he was taking it a little bit lightly.  
15 However, I have determined that I don't need to have a Fatico  
16 hearing, I don't need to make specific findings on that because  
17 based on all of the factors I'm persuaded that a guideline  
18 sentence, a sentence at the low end of the guidelines is  
19 appropriate for the other reasons whether or not he made those  
20 specific statements. So, I don't think you need to have those  
21 findings. I think in this case that this is a guidelines case.  
22 I don't think the loss amount overstates the offense. I don't  
23 think it is a case where there is any reason to vary from the  
24 guidelines.

25 Also, I agree with the government that general

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sentence

1       deterrence and specific deterrence and the need for just  
2       punishment and respect for the law call for a sentence at the  
3       low end of the guidelines range here. People need to know that  
4       this is not going to be treated lightly and is going to be  
5       taken seriously.

6           And so, for all of those reasons I intend to impose a  
7       term of six months' imprisonment, two years supervised release.  
8       I am not going to impose a fine. I don't think he is really in  
9       a position to pay one and I think the focus should be on the  
10      restitution order. There is a \$100 special assessment which is  
11      mandatory.

12       Does defense counsel know of any legal reason why  
13      sentence may not be imposed as so stated?

14       MR. FARKAS: Well, we would ask that you give an  
15      opportunity for him to surrender if you are going to impose  
16      imprisonment.

17       THE COURT: I will set a surrender date.

18       I assume there is no objection to setting a surrender  
19      date?

20       MS. GREENBERG: No, your Honor.

21       THE COURT: Okay. Is December 30th, or we can do  
22      January 6th. Is January 6 okay?

23       MS. GREENBERG: That's fine with the government.

24       THE COURT: The defendant will surrender --

25       MR. FARKAS: Your Honor, I understand that you have

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1 pronounced sentence and I -- and I know what my role is and I  
2 know what I'm supposed to accept but I am asking your Honor to  
3 consider home confinement as a substitute for the imprisonment  
4 only so that he can work. And he can't work if he is going to  
5 be jailed for six months. The restitution issue is going to be  
6 even more difficult and he honestly believes that he has this  
7 duty to make the restitution and he simply can't do that if he  
8 is in prison.

9 THE COURT: He will have to do it after.

10 MR. FARKAS: I'm sorry?

11 THE COURT: He will have to do it after. I have  
12 determined, for the reasons that I have said, that a guideline  
13 sentence is appropriate.

14 Does the government have any objection or know of any  
15 legal reason why it may the be imposed?

16 MS. GREENBERG: No, your Honor.

17 THE COURT: Mr. Soto, would you please stand?

18 It is the judgment of this Court that you be committed  
19 to the custody of the Bureau of Prisons for a period of six  
20 months. Following release you will be placed on supervised  
21 release for a period of two years with the following  
22 conditions:

23 The following conditions are mandatory: The defendant  
24 shall not commit another federal, state or local crime. The  
25 defendant shall not illegally possess a controlled substance.

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1 The defendant shall not possess a firearm or destructive  
2 device. The defendant shall refrain from any unlawful use of a  
3 controlled substance. The defendant shall submit to one drug  
4 testing within 15 days of placement on probation or supervised  
5 release and at least two unscheduled drug tests thereafter, as  
6 directed by probation.

7 The defendant shall cooperate in the collection of DNA  
8 as directed by probation. The standard conditions 1 through 13  
9 are imposed with the following special conditions:

10 The defendant shall provide the probation officer with  
11 access to any requested financial information. The defendant  
12 shall not incur any new credit charge or open additional lines  
13 of credit without the approval of probation unless the  
14 defendant is in compliance with the installment payment  
15 schedule.

16 The defendant shall submit his person, residence,  
17 place of business, vehicle or any other premises under his  
18 control to a search on the basis that the probation officer has  
19 reasonable belief that contraband or evidence of a violation of  
20 the conditions of release may be found.

21 The search must be conducted at a reasonable time and  
22 in a reasonable manner.

23 Failure to submit to a search may be ground for  
24 revocation. The defendant shall inform any other residents  
25 that the premises may be subject to search.

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sentence

1                   The defendant shall not volunteer, on any level, with  
2 any law enforcement agencies during supervised release without  
3 notifying such agencies of his status as a federal supervisee  
4 and receiving approval from probation.

5                   The defendant is to report to the nearest probation  
6 office within 72 hours of release and the defendant shall be  
7 supervised by district of residence.

8                   It is ordered the defendant will pay a special  
9 assessment of \$100 due immediately. It is further ordered the  
10 defendant shall make restitution to the Clerk of Court for  
11 disbursement to the Department of Labor in the amount of  
12 \$38,304. Payment shall be addressed to the clerk including  
13 defendant's name and corresponding docket number sent to 500  
14 Pearl Street. Restitution payments issued to the clerk shall  
15 be addressed to the U.S. Department of Labor OWCP and include  
16 defendants' name and corresponding docket number to the mailing  
17 address of the U.S. Department of Labor.

18                   The restitution shall be paid in monthly installments  
19 of \$1,250 over a period of supervision commencing 30 days after  
20 release from incarceration.

21                   Defendant shall notify the U.S. Attorney within 30  
22 days of any change of mailing address or residence that occurs  
23 while any restitution remains unpaid.

24                   I am not going to impose a fine because I believe that  
25 he doesn't he is not in a position to pay one. And, there is

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sentence

1 no forfeiture.

2 I'm setting a voluntary surrender date of January 6,  
3 2014 before 2:00 p.m. to a facility designated by the Bureau of  
4 Prisons.

5 Mr. Soto, you have a right to appeal from your  
6 conviction and sentence except to whatever extent you have  
7 validly waived that right as part of your plea agreement. If  
8 you are unable to pay the costs for appeal you may apply for  
9 leave to appeal in forma pauperis. Any appeal must be filed  
10 within 14 days of the filing of the judgment of conviction.

11 I direct that a complete copy of the presentence  
12 report be provided to the Bureau of Prisons and the sentencing  
13 Commission and that counsel on any appeal have access to the  
14 report. The clerk will prepare the judgment and see to it that  
15 the required documentation is sent to the Sentencing  
16 Commission.

17 Are there any underlying counts to be dismissed?

18 MS. GREENBERG: No, your Honor.

19 THE COURT: Is there anything further?

20 MS. GREENBERG: Nothing from the government.

21 MR. FARKAS: No.

22 THE COURT: Okay. Thank you.

23 o0o